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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 153

NORTON R. GANGER and L. C. BETHART, et al.,

Appellants,

vs.

CITY OF MIAMI, a Municipal Corporation in Dade County, Existing under the Law of the State of Florida,

Appellee.

THOMAS B. HAMILTON and JANE Q. HAMILTON, his Wife, and HUNTER LYONS, INC., a Florida Corporation, et al.,

Appellants,

vs.

CITY OF MIAMI, a Municipal Corporation in Dade County, Existing under the Law of the State of Florida,

Appellee.

Appeal from the Supreme Court of the State of Florida

MOTION TO DISMISS APPEALS

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The appellee, CITY OF MIAMI, a municipal corporation under the laws of the State of Florida, respectfully moves the Supreme Court of the United States to dismiss the appeal of the appellants, NORTON R. GANGER and L. C. BETHART, et al, from the opinion and judgment of the Supreme Court of Florida, reversing a final decree of the Circuit Court of Dade County, Florida, dated February 17, 1955, recorded in Chancery Order Book 1171, at Page 362, of the Public Records of Dade County, Florida, and filed in the Supreme Court of Florida on October 9, 1957; and to dismiss the appeal of the appellants, THOMAS B. HAMILTON and JANE Q. HAMILTON, his wife, and HUNTER LYON, INC., a Florida corporation, et al, from the opinion and judgment of the Supreme Court of Florida reversing a final decree of the Circuit Court of Dade County, Florida, dated February 17, 1955, recorded in Chancery Order Book 1171, at Page 385, of the Public Records of Dade County, Florida, and filed in the Supreme Court of Florida on October 9, 1957; and for grounds of this motion to dismiss said appeals, the appellee says:

1. The said appeals are not within the jurisdiction of the Supreme Court of the United States because not taken in conformity to statute or the rules of said Supreme Court, in that the Jurisdictional Statement of said appellants, required by Rule 15 of said rules, fails to set forth therein the following:

(a) Copies of the final decrees of the trial court, the Circuit Court of Dade County, Florida, which were reversed by opinions

and judgments of the Florida Supreme Court.

(b) Any statement showing that there was drawn in question the validity of a Florida statute on the ground of its being repugnant to the constitution, treaties or laws of the United States.

(c) The manner in which the questions presented by said appellants, were brought before the trial and appellate courts.

(d) Any statement showing when or how the questions sought to be reviewed were raised in the court of first instance or in the appellate court.

(e) Any statement showing how the questions sought to be reviewed were passed on by the court of first instance or the appellate court.

2. The Federal questions presented and sought to be reviewed by appellants (Pages 3-4 - Jurisdictional Statement), under 28 U.S.C. 1257 (2), involved only notice to property owners of Special Assessment for Paving, as prescribed by Section 56 of the charter of appellee, passed by the Florida Legislature in 1925 (Appendix Pages 31-34 of Jurisdictional Statement of appellants). Said Federal questions were not expressly passed on by the trial or appellate court. This is shown on the face of the Jurisdictional Statement of appellants. Said Jurisdiction Statement, as stated above in Ground 1 (a) of this Motion to

Dismiss Appeals, contained no opinion of the trial court attached thereto or made a part thereof. Only opinions of the appellate court were shown in said Jurisdictional Statement by copies thereof in the appendix thereto. Under these opinions, the holding of the trial court was first affirmed on January 30, 1957 and then, on rehearing, reversed on October 11, 1957. The said opinions of said appellate court, copies of which are in the appendix of said Jurisdictional Statement (Referred to hereinafter as "A"), show, in reference to the holding of the trial court concerning the sufficiency of the statutory notice, the following:

(a) The majority appellate opinion of Justice Thomas, of January 30, 1957, affirming the decree of the trial court, contained the following:

(i) "The judge decided that the notice was insufficient * * * * *". ("A" Page 4).

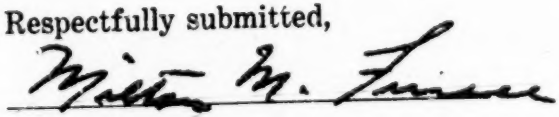
(ii) "The appellees seem to have convinced the circuit court that there were five defects rendering the notice insufficient: (1) failure to mention the place, that is, the city, where the objections would be heard, (2) absence of the name of the city commission which would hear them, (3) omission of the name of the city where the streets lay; (4) want of identity of the signatory; (5) insertion of the notice in the classified

section of the Herald." ("A" Pages 5-6).

(b) The dissenting opinion of Justice Thomas of October 11, 1957, repeated verbatim the words, quoted above under 2 (a)(i) which had been stated in his said opinion of January 30, 1957.

3. None of the said appellate opinions discussed any constitutional question. All of said appellate opinions, in discussing the statutory notice involved, discussed only the question of such notice complying with the requirements of the Florida statute. All of said opinions, those in favor of affirmance and those in favor of reversal of the trial court, held said statutory notice to be valid and strictly in accordance with the Florida statute. See majority opinion of Justice Thomas of January 30, 1957, and his dissenting opinion of October 11, 1957. ("A" Page 7 and Page 27). See concurring opinion of Justice Thornal of January 30, 1957. ("A" Page 9). See dissenting opinion of Justice Drew of January 30, 1957, and his majority opinion of October 11, 1957. ("A" Page 10, Page 12, and Page 19).

Respectfully submitted,



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Certificate of Service

I, Milton M. Ferrell, Attorney for Appellee, do hereby certify that I served the above and foregoing Motion to Dismiss Appeals by mail on the 17th day of July 1958, by placing two copies of said motion in each of two envelopes, one addressed to Clyde A. Epperson, Ingraham Building, Miami 32, Florida, and the other addressed to Anderson & Nadeau, 908 First National Bank Building, Miami, 32, Florida, and by depositing said envelopes in a United States Mail Box, with first-class postage prepaid, addressed to said persons, counsel of record for the appellants, as aforesaid, being their respective Post Office addresses.

Milton M. Ferrell